



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

**[SATS No. MO-042-FOR; Docket ID: OSM-2014-0002;
S1D1S SS08011000 SX064A000 189S180110;
S2D2S SS08011000 SX064A000 18XS501520]**

Missouri Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval and required amendments.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving, in part, an amendment to the Missouri regulatory program (Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Missouri proposed revisions to its coal Ownership and Control Rules. Missouri intends to revise its program to be no less effective than the Federal regulations and to improve operational efficiency.

DATES: The effective date is [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

- I. Background on the Missouri Program
- II. Submission of the Amendment
- III. OSMRE's Findings
- IV. Summary and Disposition of Comments
- V. OSMRE's Decision
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I. Background on the Missouri Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and

(7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Missouri program on November 21, 1980. You can find background information on the Missouri program, including the Secretary's findings, the disposition of comments, and conditions of approval, in the November 21, 1980, Federal Register (45 FR 77027). You can also find later subsequent actions concerning the Missouri program and program amendments at 30 CFR 925.10, 925.12, 925.15, and 925.16.

II. Submission of the Amendment

By letter dated February 18, 2014 (Administrative Record No. MO-679), Missouri sent us an amendment to its program under SMCRA (30 U.S.C. 1201 et seq.). Missouri submitted the amendment in response to a September 30, 2009, letter (Administrative Record No. MO-670A) that OSMRE had sent to Missouri in accordance with 30 CFR 732.17(c) and to improve operational efficiency. Missouri proposed revisions to Title 10 of its Code of State Regulations (CSR) under Division 40 Land Reclamation Commission. The specific sections of 10 CSR 40 changed by Missouri's amendment are discussed in **Part III OSMRE's Findings**. Missouri revised its program to be no less effective than the Federal regulations, to change terms, add clarifying language, make grammatical changes, and correct reference errors.

We announced receipt of the proposed amendment in the May 20, 2014, Federal Register (79 FR 28852). In the same document, we opened the public comment period and

provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because neither was requested. The public comment period ended on June 19, 2014. We did not receive any public comments.

III. OSMRE's Findings

The following are the findings we made concerning Missouri's amendment revisions under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. Any revisions that we do not specifically discuss below concerning non-substantive wording or editorial changes can be found in the full text of the program amendment available at www.regulations.gov.

A. 10 CSR 40-6.030 - Surface Mining Permit Applications - Minimum Requirements for Legal, Financial, Compliance, and Related Information.

Missouri revised paragraphs (1)(B)1 and 3, and subsections (2)(A) and (4)(C) of this part to clarify the information that must be provided in the permit application. We find that Missouri's revisions makes the regulations no less effective than the corresponding Federal regulations at 30 CFR 778.11(c), 778.12(a), 778.14(a), and 778.16(c), respectively. Therefore, we approve these revisions.

OSMRE found that Missouri did not revise its regulations to include a counterpart to 30 CFR 778.11(b)(4), which requires information to be provided for, “[e]ach business entity in the applicant’s and operator’s organizational structure, up to and including the ultimate parent entity of the applicant and operator.” Additionally, paragraphs (1)(B) and (1)(C) require names and addresses for certain individuals on the application, but do not require telephone numbers, which is inconsistent with the requirements of 30 CFR 778.11(d)(1). We find that these omissions make Missouri’s regulations in this section inconsistent with the corresponding Federal regulations at 30 CFR 778.11(b)(4) and (d)(1).

B. 10 CSR 40-6.070 - Review, Public Participation and Approval of Permit Applications and Permit Terms and Conditions.

Missouri revised subsection (7)(C) of this part by adding “operator” in conjunction with the term “applicant” as an additional person on which permit application information must be collected. We find that Missouri’s revision makes its regulations no less effective than the corresponding Federal regulations at 30 CFR 773.14. Therefore, we approve Missouri’s revision.

Missouri revised subsections (8)(M) and (N) of this part by including requirements regarding lands eligible for remining and applicant eligibility as criteria for permit approval or denial. We find that Missouri’s revisions make its

regulations no less effective than the corresponding Federal regulations at 30 CFR 785.25 and 773.15(n), respectively. Therefore, we approve Missouri's revisions.

Missouri added paragraph (11)(A)4 and revised subsection (B) in this part regarding when the regulatory authority will consider a provisionally issued permit to be improvidently issued, under what conditions the permits will be suspended or rescinded if found to be improvidently issued, and the suspension and rescission procedures. We find that Missouri's revisions make its regulations no less effective than the corresponding Federal regulations at 30 CFR 773.21 through 773.23. Therefore, we approve Missouri's revisions.

C. 10 CSR 40-6.100 - Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information.

Missouri revised subsections (1)(B) and (2)(A) of this part to clarify who must be identified and who must provide compliance information in a permit application. We find that Missouri's revisions make its regulations no less effective than the corresponding Federal regulations at 30 CFR 778.11 and 778.14, respectively. Therefore, we are approving Missouri's revisions.

OSMRE found that Missouri did not revise its regulations to include a counterpart to 30 CFR 778.11(b)(4), which requires information to be provided for, "[e]ach

business entity in the applicant's and operator's organizational structure, up to and including the ultimate parent entity of the applicant and operator." Additionally, paragraphs (1)(B) and (1)(C) require names and addresses for certain individuals on the application, but do not require telephone numbers, which is inconsistent with the requirements of 30 CFR 778.11(d)(1). We find that these omissions make Missouri's regulations in this section inconsistent with the corresponding Federal regulations at 30 CFR 778.11(b)(4) and (d)(1).

D. 10 CSR 40-8.030 – Permanent Program Inspection and Enforcement.

Missouri revised subsection (6)(G) of this part by clarifying who is notified following the issuance of a cessation order. We find that Missouri's revision will make its regulations no less effective than the corresponding Federal regulations at 30 CFR 843.11(g). Therefore, we are approving Missouri's revision.

Missouri also revised subsection (6)(H) of this part regarding post permit issuance information requirements. We find that Missouri's revision is substantively the same as the corresponding Federal regulations at 30 CFR 774.12. Therefore, we are approving Missouri's revision.

E. 10 CSR 40-8.040 – Penalty Assessment.

Missouri revised subsection (5)(B) of this part by increasing the minimum civil penalty amount assessed each day from not less than \$750 to not less than \$1,025.

We find that Missouri's revision is substantively the same as the corresponding Federal regulations at 30 CFR 845.15(b). Therefore, we are approving Missouri's revision.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On April 2, 2014, pursuant to 30 CFR 732.17(h)(11)(i) and Section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Missouri program (Administrative Record No. MO-679.01).

We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.). None of the revisions that Missouri proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on April 2, 2014, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. MO-679.01). The EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On April 2, 2014, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment (Administrative Record No. MO-679.01), but neither the SHPO nor ACHP responded to our request.

V. OSMRE's Decision

Based on the above findings, we are:

1. approving, in part, the amendment Missouri sent us on February 18, 2014;
2. not approving 10 CSR 40-6.030 and 40-6.100, pertaining to the 30 CFR 778.11(b)(4) requirement for applicant and operator information provided in the permit application, and requiring Missouri to submit a proposed amendment, or a description of an amendment to be proposed, along with a timetable for enactment, at 30 CFR 925.16(v); and
3. not approving 10 CSR 40-6.030(1)(B)-(C) and 40-6.100(1)(B)-(C), pertaining to the 30 CFR 778.11(d)(1) requirement to include telephone numbers for certain individuals in the permit application, and requiring Missouri to submit a proposed amendment, or a description of an amendment to be proposed, along with a timetable for enactment, at 30 CFR 925.16(w).

To implement this decision, we are amending the Federal regulations at 30 CFR Part 925, which codify decisions concerning the Missouri program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determination

Executive Order 12630 - Takings

This rulemaking does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866 - Regulatory Planning and Review

Pursuant to Office of Management and Budget (OMB) Guidance dated October 12, 1993, the approval of state program amendments is exempted from OMB review under Executive Order 12866

Executive Order 12988 - Civil Justice Reform

The Department of the Interior has reviewed this rule as required by Section 3(a) of Executive Order 12988. The Department has determined that this Federal Register notice meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department

limited its review under this Executive Order to the quality of this Federal Register notice and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the State regulatory program or to the program amendment that the State of Missouri drafted.

Executive Order 13132 - Federalism

This rule is not a “[p]olicy that [has] Federalism implications” as defined by Section 1(a) of Executive Order 13132 because it does not have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

Instead, this rule approves an amendment to the Missouri program submitted and drafted by that State. OSMRE reviewed the submission with fundamental federalism principles in mind as set forth in Section 2 and 3 of the Executive Order and with the principles of cooperative federalism as set forth in SMCRA. See, e.g., 30 U.S.C. 1201(f). As such, pursuant to Section 503(a)(1) and (7)(30 U.S.C. 1253(a)(1) and (7)), OSMRE reviewed the program amendment to ensure that it is “in accordance with” the requirements of SMCRA and “consistent with” the regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175 - Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rulemaking on Federally-recognized Indian tribes and have determined that the rulemaking does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve Federal regulations involving Indian lands.

Executive Order 13211 - Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

Executive Order 13211 of May 18, 2001, requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rulemaking is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rulemaking does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State

regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

Regulatory Flexibility Act

The Department of the Interior certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal, which is the subject of this rulemaking, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rulemaking would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rulemaking is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rulemaking: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rulemaking, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rulemaking will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rulemaking, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 13, 2018.

Alfred L. Clayborne, Regional Director,

Mid-Continent Region.

For the reasons set out in the preamble, 30 CFR part 925 is amended as set forth below:

PART 925 - MISSOURI

1. The authority citation for part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 et seq.

2. Section 925.15 is amended in the table by adding an entry in chronological order by "Date of final publication" to read as follows:

§925.15 Approval of Missouri regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * April 18, 2014	* * <u>[Insert date of publication in the Federal Register]</u>	* * 10 CSR 40-6.030(1)(B)1., 3., (2)(A), and (4)(C); 6.070(7)(C), (8)(M), (N), (11)(A)4., and (B); 6.100(1)(B) and (2)(A); 8.030(6)(G) and (H); and 8.040(5)(B).

3. Section 925.16 is amended by adding paragraphs (v) and (w) to read as follows:

§ 925.16 Required program amendments.

* * * * *

(v) By November 19, 2018, Missouri shall submit a proposed amendment, or a description of an amendment to be proposed, along with a timetable for enactment, that will add a counterpart to 30 CFR 778.11(b)(4), pertaining to the requirement for applicant and operator information provided in the permit application, at 10 CSR 40-6.030 and 10 CSR 40-6.100.

(w) By November 19, 2018, Missouri shall submit a proposed amendment, or a description of an amendment to be proposed, along with a timetable for enactment, that will add a counterpart to 30 CFR 778.11(d)(1), pertaining to the requirement to include telephone numbers for certain individuals in the permit application, at 10 CSR 40-6.030(1)(B)-(C) and 10 CSR 40-6.100(1)(B)-(C).

[FR Doc. 2018-10482 Filed: 5/16/2018 8:45 am; Publication Date: 5/17/2018]